

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

BRANDON P.,

Claimant,

vs.

SAN GABRIEL/POMONA REGIONAL  
CENTER,

Service Agency.

OAH NO. 2010030801

**DECISION**

Administrative Law Judge Amy C. Lahr, Office of Administrative Hearings, heard this matter in Pomona, California, on May 11, 2011.

Daniela Martinez, Program Manager, Fair Hearings, represented the San Gabriel/Pomona Regional Center (hereinafter SGPRC or Service Agency). W. P. represented her son, Brandon P.<sup>1</sup>

The parties submitted the matter for decision on May 11, 2011.

**ISSUE**

Whether the Service Agency should fund diapers for Claimant.

**FACTUAL FINDINGS**

1. Claimant is a nine-year-old male who qualifies for regional center services based on a diagnosis of autism spectrum disorder.

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<sup>1</sup> Initials have been used to protect Claimant's privacy.

2. Claimant has issues with toilet training and wears diapers. Prior to October 2009, Service Agency reimbursed Claimant's parents for Claimant's diapers.

3. On December 15, 2009, SGRPC notified Claimant through a Notice of Proposed Action (NOPA) that it would terminate reimbursement for the diapers. The stated reason for the decision was that "Effective 10/1/09, Regional Centers are prohibited from purchasing any service that would otherwise be available from a generic resource such as Medi-Cal. [Claimant] is covered by Medi-Cal. Diaper service must be accessed through this resource."

4. Claimant timely filed this fair hearing request.

5. Claimant's March 2010 Individual Program Plan states the goal that "Parent would like [Claimant] to be potty trained." The IPP notes that "[Claimant] is not toilet trained. He is bladder and bowel incontinent. However he is able to hold himself to indicate bladder needs most of the time and is able to eliminate in the toilet." The IPP states that Service Agency would "explore appropriate funding and program resources" and if none were available, that SGRPC would approve funding according to its policies, in order to achieve this IPP goal. The evidence showed that SGPRC authorized reimbursement to Claimant's parents for \$50 per month for the purchase of diapers, from March 2008 through December 2009.

6. Claimant's mother testified at the hearing. Claimant is not toilet-trained. He urinates frequently and in high volume. Claimant's mother tried many diapers to find the proper fit and absorbency. When Claimant wore diapers that didn't absorb a lot of liquid, his mother would have to change the sheets daily. In addition, Claimant developed rashes. Claimant's mother is not concerned with the source of the diaper funding, she is willing to use diapers funded by Medi-Cal provided they fit correctly, absorb Claimant's nighttime urine, and don't cause rashes. She tried several of the generic samples and found they didn't work. Claimant's mother noted that she has had difficulty connecting with Medi-Cal.

7. SGPRC acknowledged that Claimant has sensitivity issues, but proffered that Medi-Cal works in conjunction with pharmacies who can supply a variety of different diapers. SGPRC offered to assist Claimant's mother in obtaining more samples from Medi-Cal sponsored pharmacies. In addition, SGPRC offered to have Claimant examined by Dr. Yen, the Service Agency pediatrician, to see if Claimant has any medical issues that need to be addressed with regard to his urination frequency and volume.

## LEGAL CONCLUSIONS

1. Cause exists to affirm SGPRC's decision to deny funding for diapers for Claimant, as set forth in Factual Findings 1 through 7, and Legal Conclusions 2 through 6.

2. The Lanterman Act, incorporated under Welfare and Institutions Code section 4500 et seq., acknowledged the state's responsibility to provide services and supports for developmentally disabled individuals. It also recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (Welf. & Inst. Code, § 4501.)

3. Services provided must be cost effective, and the Lanterman Act requires the regional centers to control costs so far as possible, and to otherwise conserve resources that must be shared by many consumers. (Welf. & Inst. Code, §§ 4512, subd. (b), 4640.7, subd. (b), 4651, subd. (a), 4659, and 4697.)

4. A regional center is required to identify and pursue all possible funding sources for its consumers from other generic resources, and to secure services from generic sources where possible. (Welf. & Inst. Code, §§ 4659, subd. (a), 4647, subd. (a); 4646.4, subd. (a)(4)). Specifically, Section 4659 states that "Effective July 1, 2009, notwithstanding any other provision of law or regulation to the contrary, regional centers shall not purchase any service that would otherwise be available from Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, In-Home Support Services, California Children's Services, private insurance, or a health care service plan when a consumer or a family meets the criteria of this coverage but chooses not to pursue that coverage."

5. Given the foregoing, Claimant's appeal must be denied. Claimant's diapers can be provided through Medi-Cal, and thus the Service Agency must not purchase them for Claimant. Claimant's parents, with SGPRC's assistance, can explore the available options through Medi-Cal until they find an acceptable solution to meet Claimant's needs.

#### ORDER

Claimant Brandon P.'s appeal is denied. San Gabriel Pomona Regional Center may deny funding for diapers for Claimant.

DATED: May 19, 2011

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AMY C. LAHR  
Administrative Law Judge  
Office of Administrative Hearings

#### NOTICE

**This is the final administrative decision: both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.**